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September 22, 2016

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, WC Docket No. 16-106

Dear Ms. Dortch:

On September 20, 2016, Rebecca Arbogast, Kathy Zachem, and the undersigned of Comcast Corporation (“Comcast”) met with Stephanie Weiner from the Chairman’s Office and Matthew DelNero and Lisa Hone from the Wireline Competition Bureau to discuss arguments set forth in Comcast’s comments and reply comments in response to the above-captioned Notice of Proposed Rulemaking.¹ In particular, we:

- Expressed our agreement with the Federal Trade Commission’s (“FTC’s”) comments that any rules the Commission adopts should use a sensitivity-based approach to consent.² Under such an approach, opt-in consent would be required only with respect to the use or disclosure of sensitive information obtained by the ISP through its provision of the ISP service to customers, and “[o]pt-out is sufficient for use and sharing of non-sensitive data.”³
- Urged the Commission to allow for the use and disclosure of de-identified data, so long as the ISP has taken reasonable and appropriate steps to de-identify the data. As explained by other parties on the record, there are numerous mechanisms that will significantly limit the likelihood of re-identification and that are consistent with the

¹ *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, Notice of Proposed Rulemaking, WC Docket No. 16-106 (rel. Apr. 1, 2016) (“*NPRM*”).

² See FTC Comments at 22-23 (“FTC staff recommends that the FCC consider the FTC’s longstanding approach, which calls for the level of choice to be tied to the sensitivity of data. . .”).

³ *Id.* at 35.

Communications Act, other privacy statutes in the U.S. and around the world, and the FTC's de-identification standard.⁴

- Argued that ISPs should be permitted to use non-sensitive customer-related information for first-party marketing (i.e., to market other products or services they or their affiliates offer) based on implied consent. In cases where an affiliate's relationship to the ISP is not clear to a reasonable consumer (e.g., there is no common name or branding or other evidence of a connection), opt-out consent would be required. Such an approach would be consistent with generally-accepted Internet privacy norms, guidelines set forth by the Federal Trade Commission⁵ and endorsed in the Administration's *Consumer Privacy Bill of Rights*,⁶ and the Commission's previous interpretation of its authority under Section 222.⁷

⁴ See, e.g., IMS Health Comments at 6 ("All other data privacy frameworks that exist in the United States (and in most places globally) permit de-identification of individual data, where appropriate steps are taken to remove identifiers and protect the data."); Letter from Jules Polonetsky, CEO, Future of Privacy Forum, to Marlene Dortch, Secretary, FCC (filed Sept. 12, 2016) (describing "the various approaches other than aggregation to de-identifying data that preserve the utility of such data while protecting consumer privacy by minimizing the risk that data will be de-identified").

⁵ See *Protecting Consumer Privacy in an Era of Rapid Change*, FTC Report, Federal Trade Commission, at 40 (Mar. 2012), <https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-report-protecting-consumer-privacy-era-rapid-change-recommendations/120326privacyreport.pdf> ("As discussed, the Commission has revised the standard for determining whether a practice requires consumer choice but believes that most first-party marketing practices are consistent with the consumer's relationship with the business and thus do not necessitate consumer choice."); *id.* at 42 (a choice mechanism should be used where an affiliate relationship is not clear to consumers).

⁶ See Executive Office of the President, *Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy*, White House Report, at 17-18 (Feb. 2012), www.whitehouse.gov/sites/default/files/privacy-final.pdf ("[C]ompanies may infer consent to use personal data to conduct marketing in the context of most first-party relationships, given the familiarity of this activity in digital and in-person commerce, the visibility of this kind of marketing, the presence of an easily identifiable party to contact to provide feedback, and consumers' opportunity to end their relationship with a company if they are dissatisfied with it.").

⁷ See, e.g., *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061 ¶ 24 (1998) (interpreting Section 222 to allow telecommunications carriers to rely on "implied customer approval" for certain first-party marketing); *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended*, Order on Reconsideration and Petition for Forbearance, 14 FCC Rcd 14409 ¶ 39-56 (1999) ("[W]e conclude that section 222(c)(1)(B) allows carriers to use CPNI, without customer approval, to separately market CPE and many information services to their customers.").

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Please direct any questions to the undersigned.

Respectfully submitted,

/s/ Francis M. Buono

Senior Vice President, Legal Regulatory Affairs &
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cc (via email):

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Matthew DelNero
Lisa Hone